

REVISED LAWS OF MINNESOTA *94*

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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ficiaries does not give the probate court power to administer the trust, and its approval of a settlement by such administrator and release was without jurisdiction. *Aho v. Republic Iron & Steel Co.*, 104 Minn. 322, 116 N. W. 590.

The probate court has no jurisdiction to distribute funds recovered by an administrator under this section. The distribution rests with the district court. *Mayer v. Mayer*, 106 Minn. 484, 119 N. W. 217.

Pleading.—A complaint which alleges that deceased left surviving him a certain person as his next of kin and heir at law, without stating the relation of such person, or that deceased left no widow, is good as against a demurrer. *Lahti v. Oliver Iron Min. Co.*, 106 Minn. 241, 118 N. W. 1018.

Evidence.—Evidence held sufficient to sustain a finding that defendant's negligence was the proximate cause of death. *Moore v. Northern Pac. R. Co.*, 121 N. W. 392.

The fact that a patient dies immediately after an operation is not of itself evidence of negligence of the operating surgeon. *Staloch v. Holm*, 100 Minn. 276, 111 N. W. 264, 9 L. R. A. (N. S.) 712.

Evidence held insufficient to establish that death was caused by injuries in a railroad accident: it being conceded that decedent died of peritonitis within five days after childbirth and five months after the accident. *Mageau v. Great Northern R. Co.*, 102 Minn. 399, 113 N. W. 1016.

As to the presumption that one who was killed while crossing a railway track looked and listened before attempting to cross, see *Carlson v. Chicago & N. W. Ry. Co.*, 96 Minn. 504, 105 N. W. 555, 4 L. R. A. (N. S.) 349, 113 Am. St. Rep. 655.

Damages.—Where the relation is such that the beneficiary would have been entitled of right to support from decedent, the law presumes the life to be of some value; and this presumption was not conclusively overcome by the fact that decedent, a lad of 17, was self-supporting, and that the father lived in another state and had demanded no pecuniary assistance for three years. A verdict of \$1,000 was not excessive. *Youngquist v. Minneapolis St. Ry. Co.*, 102 Minn. 501, 114 N. W. 259.

Where deceased was 24 years old, strong, sober, industrious, and intelligent, and was survived by a widow 23 years old and an infant child, a verdict of \$5,000 was not excessive. *Balder v. Zenith Furnace Co.*, 103 Minn. 345, 114 N. W. 948.

Where deceased was a young, unmarried man, 23 years old, of good habits and sound body and mind, and left a father and mother of the ages of 64 and 59, respectively, a verdict of \$3,000 was not excessive. *Holden v. Great Northern R. Co.*, 103 Minn. 98, 114 N. W. 365.

Damages held excessive, and a new trial granted, unless the plaintiff consent to a reduction. *Bremer v. Minneapolis, St. P. & S. S. M. R. Co.*, 96 Minn. 477, 105 N. W. 494.

Recovery as a bar.—Where damages to a wife, resulting from defendant's fault, have in no part been caused by her wrong, two causes of action may accrue—one to her, for the direct injuries to her person; the other to her husband, for the consequential injuries to him. That such injuries have resulted in her death, and that a recovery has been had under the statute by the administrator, is no bar to the action by the husband. *Mageau v. Great Northern R. Co.*, 103 Minn. 290, 115 N. W. 651, 946, 15 L. R. A. (N. S.) 511.

CHAPTER 85.

OFFICIAL AND OTHER BONDS—FINES AND FORFEITURES.

4524. Modes of justification.—The justification of sureties mentioned in section 4523 shall be by affidavit, annexed to the bond or other security, wherein each surety shall state under oath that he is worth a certain definite amount above his debts and liabilities and exclusive of his property exempt from execution, but the aggregate of the amount sworn to as aforesaid by all the sureties shall be not less than double the amount of the penalty of such bond or other security. Where in the cases provided by law exception is taken to sureties, they shall be examined by the judge or officer before whom they are required to attend for purposes of justification, in such manner as he shall deem proper. The examination shall be reduced to writing and filed in the cause, and, if the judge

or officer deems the sureties sufficient, he shall endorse his approval upon the instrument, and return the same to the proper custodian thereof. (R. L. § 4524, as amended by Laws 1907, c. 311, § 1.)

[4524—]1. **State and county officers—Uniform bond.**—Whenever by law an official bond is required of any state or county officer, it shall be sufficient for all purposes if the same be substantially in the following form:

Know all men by these presents that as principal, and as suret, are jointly and severally held and firmly bound to the state of Minnesota in the sum of dollars, lawful money of the United States, to the payment of which, well and truly to be made, we hereby bind ourselves, and each of us, our, and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this day of A. D. 19.....

The condition of the above obligation is such, that whereas, the above bounden was heretofore duly elected (or appointed) to the office of

Now therefore, if the said shall faithfully and impartially, in all things, during his continuance in office, perform the duties thereof without fraud, deceit or oppression, and pay over without delay to the officer entitled by law thereto all moneys which shall come into his hands by virtue thereof, then this obligation shall be void; otherwise to remain in full force and effect.

..... (Seal)

Signed, sealed and delivered in presence of

.....

('09 c. 107 § 1)

Historical.—"An act to provide a uniform form of official bonds for state and county officers." Approved March 25, 1909.

[4524—]2. **Same—Bonds executed under other provisions.**—All those rights and obligations which would be created were the bond of any such officer executed under any other law are hereby declared to exist and be of the same force where such bond is executed in the foregoing form. ('09 c. 107 § 2)

4533. Official bonds, security to whom—Actions.

Misconduct in office.—A deputy county auditor issued spurious refund orders on the county treasurer in favor of fictitious payees, purporting to be for the refunding of taxes received through redemption. He procured the orders to be authenticated by the chairman of the county board, forged the names of the fictitious payees to assignments thereof, and sold the same to a bank. Held, that any loss sustained by the bank through its purchase could not be attributed to the official misconduct of the deputy in issuing the same, and that the bank had no claim to recover any such loss, either from the county or the surety on the auditor's bond. National Surety Co. v. State Savings Bank, 156 Fed. 21, 84 C. C. A. 187, 14 L. R. A. (N. S.) 155.

4535. Bonds of public contractors—Contracts with state board of control—Penalty.—No contract with the state, or with any municipal corporation or other public board or body thereof, for the doing of any public work, shall be valid for any purpose, unless the contractor shall give bond to the state or other body contracted with, for the use of the obligee and of all persons doing work or furnishing skill, tools, machinery, or materials under, or for the purpose of, such contract, conditioned for the payment, as they become due, of all just claims for such work, tools, machinery, skill and materials, for the completion of the contract in accordance with its terms, for saving the obligee harmless from all costs and charges that may accrue on account of the doing of the work specified, and for compliance with the laws appertaining thereto. The penalty

of such bond shall be not less than the contract price. Provided, that in contracts made by the state board of control on behalf of the state the penalty of the bond shall be in such amount as the state board of control may fix, but not less than three-quarters of the contract price. (R. L. § 4535, as amended by Laws 1909, c. 429, § 1.)

Section 2 repeals inconsistent acts.

Cited in *Wilcox Lumber Co. v. School Dist. No. 268 of Otter Tail County*, 103 Minn. 43, 114 N. W. 262.

See note under section 4536.

Laws 1901, c. 321, cited and applied in *Wilcox Lumber Co. v. School Dist. No. 268 of Otter Tail County*, 106 Minn. 208, 118 N. W. 794.

4536. Same—Approval and filing—Liability for failure—Changes.—Such bond shall be approved by, and filed with, the treasurer of the obligee named therein unless the contract be for the erection, improvement, or repair of buildings for a state institution, in which case it shall be approved and filed with the board or officer having the financial management of such institution. If such bond be not taken, the corporation or body for which work is done under the contract shall be liable to all persons, furnishing labor, skill or material to the contractor thereunder for any loss resulting to them from such failure. No assignment, modification, or change of the contract, or change in the work covered thereby, nor any extension of time for completion of the contract shall release the sureties on said bond. (R. L. 4536, as amended by Laws 1907, c. 379.)

Liability of corporation—Extent.—The liability under sections 4535, 4536, for failure to require a bond, extends to losses suffered by those dealing with the contractor by reason of his insolvency or inability to pay the debts incurred. No liability attaches where he is solvent and able to discharge all obligations. *Wilcox Lumber Co. v. School Dist. No. 268 of Otter Tail County*, 103 Minn. 43, 114 N. W. 262.

— **Public governmental capacity.**—Under Laws 1895, c. 354, as amended by Laws 1897, c. 307, and Laws 1901, c. 321, the liability imposed upon the corporation, when it neglects to take bond, is incurred when the contract is valid and is for the construction of public improvements which are being made by the corporation in the exercise of its public governmental, as well as its private corporate powers. *Black v. Board of Com'rs of Polk County*, 97 Minn. 487, 107 N. W. 560.

— **Irregularities in contract.**—Where a contract was entered into and acted on by both parties, and the building erected, the municipality could not urge irregularities in the formation of the contract to defeat recovery for failure of its officers to require the bond. *Wilcox Lumber Co. v. School Dist. No. 268, Otter Tail County*, 103 Minn. 43, 114 N. W. 262.

4539. Limit of time to bring action.—No action shall be maintained on any such bond unless within ninety days after the completion of the contract and acceptance of the building by the proper public authorities, the plaintiff shall serve upon the principal and his sureties a written notice specifying the nature and amount of his claim and the date of furnishing the last item thereof, nor unless the action is begun within one year after the service of such notice. (R. L. § 4539, as amended by Laws 1909, c. 413, § 1.)

4540. Actions for fines, forfeitures and penalties—Collusion.

Operation in general.—This section is permissive, and does not exclude the Attorney General. *State ex rel. Young v. Robinson*, 101 Minn. 277, 112 N. W. 269, 20 L. R. A. (N. S.) 1127.